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ABSTRACT

This short monograph details a simple system of documentation that can be used with any school district's personnel evaluation process. The goal of the monograph is to help supervisors, especially principals, accord fair treatment to employees who are systematically evaluated. The documentation system is founded on the concept of communication. Its goal is to humanize the evaluation and termination process with the ultimate objective of improving an employee's performance to an acceptable level. Based on a series of several types of memoranda, the documentation system helps prepare principals and supervisors for hearings, lawsuits, and appeals for a variety of actions brought about by disgruntled employees and their attorneys. The process outlined in the monograph is intended to keep the volume of documentation to a minimum yet meet the need for full and complete documentation. To provide a focus, the monograph uses teachers as the representative employee group, but the principles and steps described can be applied to any relationship between a school employee and supervisor at any level. Appended are sample memoranda, a sample letter of reprimand from a superintendent to a teacher, and a checklist for creating effective documentation. (WFA)

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Kelly Frels and Janet L. Horton

A practical, concise guide of legal considerations in school employee evaluation

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Dayton, Ohio

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The Education Law Association (ELA) is a private, nonadvocacy, nonprofit, international member association. The opinions expressed in this publication are those of the authors and do not represent official views of the Association.

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This monograph is intended to provide practical ideas for working with documentation in the school setting. This monograph is not intended or offered as legal advice. Each situation is different, so a qualified school attorney should be consulted on specific legal issues that arise within the scope of this monograph.

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Introduction

The primary objective of a school district's employee evaluation system is to improve employees' performance so they can become successful and contribute to achieving the district's goals. If the evaluation process does not produce this positive result, the employee must be replaced, either by resignation or termination. The district's evaluation system thus serves a secondary function—the removal of the unsatisfactory employee.

Depending upon the nature of the employee's relationship or contract status with a school district, the district must observe various degrees of procedural due process before relieving a person of a position. In many situations, this process culminates with a hearing before the board of education or a hearing officer to determine whether cause exists to terminate the employee.

Much has been written about the due process requirements involved in the termination process. Because that process varies by state and the nature of the employment relationship with a district, this monograph will not include a review of the procedural requirements necessary to effect a termination. Instead, it will provide practical advice to principals and other supervisors concerning the documentation which should be generated and used in the evaluation process and presented at any required hearing to support a recommendation for termination. It is important to remember that the due process rights of employees do not shield them from termination. Incapable or insubordinate employees can and should be terminated. Due process requirements simply prescribe procedures which must be followed in effectuating those terminations. Of course, the allowable grounds for termination will usually be enunciated in state law, an employment contract, and/or a collective bargaining agreement. Thus, these sources must be examined to determine the criteria under which employees should be judged and evaluated.

In school employee termination hearings, principals are often faced with the claim that there is too little documentation or evidence of help being given to the employee and, as such, the principal has not done a sufficient job in working with the employee to remediate weaknesses. In other cases, the aggrieved employee claims that the principal has developed so much documentation that the employee has been harassed. At other employee termination hearings, the employee complains that the process is unfair and that he or she did not know what was expected in the perfor-

mance of his or her duties. As a result of these attacks, there has been a noticeable unwillingness on the part of principals and other supervisors to bring a recommendation for termination to the superintendent or the board of education. In most situations, the supervisor recognizes that the supervisor, rather than the employee, will be put on trial.

In an effort to provide support for the supervisor, and especially principals, and to help ensure the fair treatment of employees who are evaluated, a simple but effective system of communication founded in documentation has been developed which can be used in conjunction with virtually any school district's evaluation system, and with a variety of contractual schemes authorized by state statutes. This documentation system is founded on the concept of communication, and its goal is to humanize the evaluation and documentation process with the ultimate objective of improving an employee's performance to an acceptable level. If an employee's performance does not improve, the system is designed to provide an incentive for voluntary resignation or, if voluntary resignation is not received, to provide the necessary documentation for the supervisor to have confidence in recommending the employee's termination.

This communication and documentation system becomes an essential ingredient in preparing the district's principals and supervisors not only for a hearing before a hearing officer or the board of education, but for appeals and lawsuits filed with a state commissioner of education, an arbitrator, or a court. This system can also provide the necessary documentation to sustain the termination if the employee files a discrimination complaint with the Equal Employment Opportunity Commission or the Department of Education. Furthermore, adherence to a system of this nature can help avoid First Amendment or whistleblower problems from becoming significant issues. If there is systematic documentation of poor performance before an employee engages in a protected speech activity, the performance deficiency may continue to be addressed as needed and termination recommended if required. In contrast, the absence of such documentation prior to an employee's engaging in a protected speech activity could brand the employee as legally untouchable because the documentation may appear to be retaliation for the employee's speech.

For simplicity and to provide a focus, this monograph will use teachers as the representative employee group. Although this monograph refers to the teacher/principal relationship, the content is

equally applicable to the relationship between a school employee and supervisor at any level.

The Documentation System

The documentation contemplated in a teacher evaluation system involves the use of several types of written memoranda. First, *memoranda to the file* should be sparingly used to serve as a supervisor's memory keys for less significant infractions or deviations by a teacher. Second, *specific incident memoranda* should be used to record conferences with a teacher concerning a more significant event. Third, *summary memoranda* should be used to record conferences with a teacher in which several incidents, problems, or deficiencies are discussed. Fourth, *visitation memoranda* should record observations made of a teacher's on-the-job performance. Fifth, an *assessment instrument* should be used to evaluate the teacher's overall performance.

Documentation concerning a teacher can and should be used for several purposes. First, it allows the principal to follow a teacher's actions and performance, thus enabling the principal to pinpoint weaknesses and problem areas. Second, it informs the teacher of any problems or deficiencies and provides valuable information concerning the necessary corrective steps the teacher must take to improve. Third, if a teacher's performance does not improve, it serves as concrete evidence to support a recommendation for termination.

The process outlined below should keep the volume of documents to a minimum, yet meet the need for full and complete documentation. This documentation system anticipates that a district has an evaluation system, and it attempts to take into account the practicalities of the time constraints placed on school principals and other supervisors. By following the suggested documentation process below, the goals of improving employee performance or removing an unsatisfactory teacher should be attainable. Care must be taken, however, to ensure that this process conforms with state law and school board policies.

Memoranda to the File (Appendix A, page 17)

Whenever a principal observes an incident or behavior that is not of such a significantly serious nature to require an immediate

conference with the teacher, but which should ultimately be considered in the teacher's evaluation or discussed at a general conference with the teacher, the principal should prepare a short *memorandum to the file*. These *file memoranda* can be in various forms, such as a notation on a calendar or in a notebook with separate pages designated for specific individuals. These file memoranda should include the name of the teacher, the name of the principal, the date of the occurrence and the facts of the event observed. These file memoranda can be used as memory keys for the following limited purposes:

1. Conference with the teacher concerning the incident or incidents,
2. Assessment of the teacher's performance, and
3. Refreshing the memory of the principal for testimony at any proceeding or hearing relative to the teacher's performance if the memos have not been incorporated into *summary memoranda* or the evaluation documents.

These file memoranda should be used sparingly and only for minor matters. If an incident is in any way serious, the *specific incident memorandum* following a conference with the teacher should be used.

Most administrators find it counterproductive to keep the existence of these file memoranda secret from the teachers. In fact, most administrators find it helpful to make all employees aware that these memoranda are kept and actually encourage the employees to review any file memoranda made concerning their performance.

Copies of these file memoranda normally need not be given to the teacher unless the teacher requests them under a state's open records act; however, if the copies are not given to the teacher upon request, they should not normally be used in a subsequent hearing as an evidentiary document to establish facts. In fact, in some states, documents not shown to the teacher may not be considered in that state's formal evaluation process. The best practice is to incorporate the contents of these file memoranda into a summary memorandum or evaluation that is given to the teacher after a conference. If a summary memorandum includes the information contained in the file memoranda, the file memoranda should never have to be used again.

Even though it may not be the intention of the principal to use these documents as future evidence or to share the file memoranda

with the teacher, the memoranda should be written with the knowledge that copies may actually be introduced into a future proceeding or made available to the teacher through a request under most states' open records acts. For example, if file memoranda are being used to refresh a principal's memory at a hearing, in most states the attorney for the teacher is entitled to see copies of the documents. Thus, a principal should exercise care not to write or record anything in a manner that could cause future embarrassment. A good practice is to record facts rather than conclusions or opinions in file memoranda. See Appendix A for a sample "memorandum to the file" that could be kept by a principal.

Specific Incident Memoranda (Appendix B, page 18)

If the principal observes an incident or behavior, or has a complaint from a third party that is significant, the principal should consider sending the teacher a memorandum concerning the specific incident. This memorandum should be sent only *after* the principal holds a conference with the teacher at which the incident is discussed and the teacher's viewpoint is considered. The specific incident memorandum should summarize the complaint, whether from a third party or from the principal's observation(s); the teacher's response; the principal's decision regarding the matter; and any directives, corrective action, or reprimands to the teacher. If the incident is so serious that termination is to be recommended immediately, the memorandum should so state. While many administrators might like to avoid talking with a teacher about an incident in the hope that it will go away, such an attitude is self-defeating and naive. These incidents should be faced head on as they occur. Teachers generally want to know of problems immediately to avoid their reoccurrence. Thirty minutes spent when the incident occurs may provide the spark to help the teacher improve or may avoid a two-day hearing or a week-long trial at some later date.

Moreover, the failure to confront problems, infractions, and deficiencies at the time they occur can weaken a later case for termination. For example, suppose several incidents occur in the fall of a school year, but they are not mentioned to the teacher by the principal. An attempt to use those incidents to support a proposed termination in the spring of that school year may prove difficult. The teacher will claim that he or she is being treated unfairly or that

the reasons are a pretext for discriminatory motives because the reason(s) for termination were not discussed with the teacher earlier in the school year when they occurred. Not dealing with the problems as they occur makes the principal appear to be arbitrary or devious and may taint a proposal to terminate.

If the specific incident concerning the teacher comes from a third party such as a parent or student, the principal must fully examine the facts and determine whether the third party's information is correct. It is improper and potentially disastrous to base a decision to terminate on information from a third party when the truthfulness of the allegation has not been established. Upon receiving a third party complaint, the principal should request the informant to submit the complaint in writing and conduct an investigation. The principal should arrange a conference with the teacher to obtain the teacher's side of the story. If there is a discrepancy between the third party's allegations and the teacher's explanations, the principal should interview any witnesses and attempt to determine what occurred. It may be necessary to have the teacher confront the complainant in an informal conference to determine what actually occurred. Although the results of a polygraph test cannot be used in a termination proceeding in most states, in really serious situations a district may permit a teacher to voluntarily take a polygraph test as a means to aid in establishing his or her innocence. The district should approve the examiner and approach used. The principal should advise the third party if adverse action may be taken against the teacher based on the incident, and the third party must be available to testify before the board, an arbitrator, or a court. If the third party will not agree to appear as a witness, other independent evidence must be available to establish the relevant facts at a hearing. Otherwise, action adverse to the teacher should not be taken because there will be no evidence to support the reason(s) for the action.

In many cases, it will simply not be possible for the principal to have everyone agree on what happened, so the principal has to act as a judge and decide whose story to believe. If the parties can eventually reach agreement, or if the principal has enough information to make a factual determination, a specific incident memorandum can be prepared. Such a memorandum should explain the findings made by the principal and the reasons for those findings. Specific directives or suggestions to the teacher should be included in the memorandum as appropriate.

It is important to establish on the face of the specific incident memorandum that the teacher received a copy of the document. In teacher termination hearings, disputes often arise over whether the teacher ever received a copy of a particular document. It is essential, therefore, to have the teacher sign the memorandum acknowledging its receipt. If a teacher refuses to sign, the principal should have an adult witness other than the principal sign and date a copy of the document verifying that the teacher was given a copy of the memorandum, but refused to sign an acknowledgement of its receipt. It should be made clear to the teacher, either on the face of the document or orally, that the teacher's signature, verifying that a copy of the memorandum has been received, does not constitute agreement with its contents.

It is important that the teacher has the opportunity to respond to any memorandum. This can be accomplished by inviting the teacher to make a written statement concerning any differences of fact or opinion expressed by the principal in the memorandum by a certain date or within a given number of days. For example, the final paragraph of a memorandum might conclude, "If you disagree with the facts or conclusions stated in this memorandum, please advise me in writing no later than (date) so we can meet and work out any differences." By so doing, any disagreement can be noted, and the differences hopefully resolved immediately. In serious situations where the employee has proven to be recalcitrant or is of questionable veracity, one might consider a final sentence such as "If you do not respond, I can only assume you agree with the facts stated in this memorandum." A statement of this nature should be used sparingly because it tends to polarize the positions of the administrator and the employee, thus making future communications more difficult.

Giving the teacher an opportunity to submit a written response disagreeing with the contents of the memorandum by responding in writing puts the teacher on notice of the facts and findings stated in the memorandum. If no disagreement is noted in writing by the teacher, most reasonable people presume that the contents of the memorandum accurately reflect the facts. Members of a jury or a judge examining this situation will normally take the view that a reasonable person who received such a memorandum, and who disagreed with the facts, would prepare a written response to the items with which he or she disagrees. If the teacher does not respond within the time stated in the memorandum, it becomes difficult to argue at a termination hearing that the teacher now disagrees with

the content of the memorandum or disagreed when the memorandum was written. See Appendix B for a sample specific incident memorandum.

Visitation Memoranda

In some school districts, it is a common practice of principals to summarize a visit to a teacher's classroom. If visitation forms or checklists are used, or if *visitation memoranda* are prepared, their contents should be reviewed with the teacher, and the teacher should be given a copy. Suggestions for improvement or any specific directives should be made in a conference and noted in the memorandum. A visitation memorandum may be used in a termination proceeding, but the results of a visitation are normally reviewed in a summary memorandum or in the evaluation document.

Summary Memoranda (Appendices C and D, pages 20 and 22)

Summary memoranda are ideal ways to outline the results of conferences concerning several incidents, classroom visitations, or a conference regarding general teacher performance. Through such memoranda, the principal may incorporate matters referred to in the file memoranda (which may not have been given to or discussed with the teacher previously) and matters not reflected in other memoranda. The summary memorandum should be used to issue directives to the teacher, reach understanding and establish standards, provide evidence that a conference was held, and confirm the subjects discussed. A copy of each summary memorandum should be given to the teacher, and the teacher should acknowledge receipt as with the specific incident memorandum. The teacher should also be given an opportunity to offer any written responses disputing the facts and conclusions stated in the memorandum. If a teacher disagrees with the facts stated in the memorandum and files a response, a subsequent conference should be held with a follow-up memorandum to try to resolve any differences which may exist. The same comments applicable to the specific incident memoranda reviewed above are also applicable to summary memoranda, with the major difference being that summary memoranda are designed to cover general conferences with the teacher on several matters rather than only on a specific incident.

Included as Appendix C is a general summary memorandum. Appendix D is a summary memorandum that includes more specific directives and a warning that failure to comply with the directives could result in termination.

The Assessment or Evaluation Document

The *assessment or evaluation document* should be completed as prescribed by the policies and procedures of the district and by any state laws or regulations. A summary narrative or memorandum should be considered for each negative assessment noted in the document. This can be done on the assessment document or on an attachment to the evaluation itself. If the assessment is such that the teacher might be terminated if no improvement is shown, the teacher should be advised that failure to improve could result in a recommendation for termination. Furthermore, it is wise to include instructions or specific directives for improvement. Such a practice is not only helpful to the teacher, but it also strengthens the argument that the teacher has been treated fairly, if the principal's actions are later questioned. Through the use of such evaluation documents, the teacher will be put on notice that he or she has deficiencies that could result in a proposal to terminate should those deficiencies not be remedied according to the instructions given for improvement. All identified deficiencies of the teacher, as well as any problems that have been encountered during the assessment period, should be included in the assessment document. If the teacher has not remedied a deficiency from previous years, it should be noted on the assessment. A deficiency once identified and not corrected never becomes stale if the deficiency is appropriately carried forward in documentation.

In order to avoid difficulties with ratings on the evaluation, a teacher should not be rated highly or too positively when he or she is initially employed or assigned to a school and before the administrator has an in-depth and accurate picture of the teacher's skill, talent, and capability; rather, a straightforward and truthful evaluation should be made. It is much easier to raise evaluations in subsequent years than it is to lower inflated assessments. Furthermore, a fair system of evaluation requires the setting of standards and expectations at the beginning of the school year with the principal following through with the implementation of those standards through the evaluation process.

The Close Out Memorandum (Appendix E, page 25)

Occasionally, a teacher will write a response to the administrator's memorandum if he or she disagrees with the facts, conclusions, or directives in it. If a teacher does respond to the memorandum, it is essential that the administrator carefully review the response. If the teacher disagrees with the principal's statement of facts in the original memorandum and offers specific information in his or her defense, the principal may need to further investigate the matter. Sometimes a teacher may accuse the administrator of discriminatory conduct or motives in the teacher's response. Such accusations should not be ignored but should be addressed specifically by the principal. A teacher's response may also indicate that he or she is confused about a directive or corrective action. After reading the response, the administrator should not hesitate to hold another conference with the teacher to resolve any issues created by the teacher's response.

The results of this follow-up conference should be memorialized in a specific incident or summary memorandum sent by the principal. If the communication in the conference is effective and is properly reflected in the memorandum, a teacher will rarely have the occasion to respond again. However, a second response from the teacher sometimes does result and another conference may be necessary. At some point, however, the memorandum writing must be brought to a close and, in normal circumstances, the sending of the follow-up memorandum to this conference may be an appropriate time. A close out memorandum like the example in Appendix E may be written. The language inviting a response from the teacher is deleted, and the teacher is advised that the matter should be considered closed.

Documentation in General

The cardinal rule of effective communication and documentation is to conference first and write second. If a matter is significant enough to write an individualized memorandum, it is important that the writer first conference with the teacher to secure his or her side of the issue. Only in an extremely rare case should a principal have any memorandum prepared in advance of the conference to hand to the teacher after the conference.

In preparing any memorandum, reliance should be made on the facts, and conclusionary statements or opinions not supported by the facts should be avoided. For example, in a classroom visitation memorandum, the recitation that the teacher's classroom was "disorderly," without any explanation, is not very specific or helpful. Rather, the principal should be specific and state, for example, that he or she saw three children in the classroom talking during class and saw one child playing in the back of the room. The principal should note that these acts were unnoticed by the teacher or were not corrected by the teacher. Furthermore, inflammatory words should not be used. For example, rather than characterizing an action as simply "insubordination," the evaluator should factually describe the action and refer to the teacher's action as a failure to comply with previous official directives and/or specific school board policy.

It is the quality of the memorandum and not the quantity of words or the number of pages that counts. Directives given in a memorandum should be direct, specific, to the point, and be free of educational jargon. For example, when directing a sometimes tardy teacher to arrive at school on time, state: "You are required to be at school by (time) and you will be expected to have signed in by that time," rather than, "You are required to be at school on time." Instead of directing that, "Your lesson plans are due once a week," the principal might state, "Your lesson plans are due in my box or to me via email by 4:00 P.M. on each Friday, and I expect you to have them there beginning this Friday." When written in a constructive atmosphere, precise directives like these tend to clear the air and avoid real or imagined confusion about what is expected.

The specific incident memorandum, the summary memorandum, the visitation memorandum and the assessment document should be written in the first person and personalized as much as possible. Avoid the use of "we" or "they" unless two or more persons are involved and then identify everyone by name. The key to the success of this documentation system is to provide an opportunity for the principal and the teacher to meet, mutually work out the problem, and determine the future actions of the teacher.

Care should be taken to treat all teachers alike, especially when dealing with absences and tardies. It is destructive and embarrassing to have a teacher's attorney present a school's sign-in sheet at a hearing as evidence that other teachers have more tardies and more absences than the teacher who is being proposed for termination for excessive tardies and absences.

A memorandum written when the principal is angry should never be given immediately to the teacher. It is much better for the principal to reflect for a day or so or call in an independent third party to review a memorandum prior to sending it. By doing so, the principal can avoid statements which he or she might later regret. In order to be effective, however, any memorandum must be prepared and sent to the teacher soon after the incident and conference occur. Under no circumstances should a memorandum be prepared after the decision to terminate has been made and backdated to reflect the incident upon which the proposed termination will be based.

As in all teacher matters, the evaluator should be careful to ensure that the teacher feels he or she has been fairly treated. One should remember that, if the teacher's performance does not improve and a recommendation for termination is made, the fairness of the process will be judged by the members of the board, and possibly, eventually the state's commissioner of education, an arbitrator, members of a jury, or a judge. In evaluating whether a teacher has been treated fairly, one should attempt to view the situation from the perspective of the hypothetical, reasonable person who, after receiving all the facts, would determine that the process was fair. Another helpful standard for judging fairness is for the principal to treat the teacher as the principal would like to be treated, if the principal were in the same circumstances.

By following the procedures outlined above, the only documents that would normally be used as documentary evidence at a termination hearing would be the summary memoranda and the evaluation or assessment instruments. Occasionally, specific incident and visitation memoranda would be included. Generally, however, these specific incident and visitation memoranda should be reviewed and included in a subsequent summary memorandum or evaluation instrument. If the teacher does not receive a copy of a memorandum to the file, it should not be used as evidence at a hearing, and should be used only to refresh the principal's memory while testifying concerning the specific facts of an event. Again, if summary memoranda properly reflect the incidents recorded in the file memoranda, the file memoranda should never have to be referred to again.

Attached as Appendix F (page 27) is an example of how not to write a memorandum or letter. Appendix F violates many of the principles of documentation reviewed above and should be avoided.

Evaluating Termination Options

If the teacher's performance does not improve to an acceptable level, or if the teacher does not comply with administrative directives and board policies, the principal will have to determine whether to recommend that the teacher be terminated. Before a final recommendation is made to the superintendent or the board concerning a teacher's contractual status, the principal and the principal's supervisor should hold a conference with the teacher. The teacher should be confronted with the teacher's inadequacies or problems and be given an opportunity to explain his or her position. This helps ensure against misunderstandings of the basic reasons for the proposed termination, and it offers the teacher a chance to present his or her side before a final recommendation for termination is made to the superintendent or board. The conference also gives the principal and the supervisor an opportunity to consider any additional facts or viewpoints a teacher may present, examine the situation more closely, and determine whether termination is the proper alternative. If there is actually a personality conflict between the principal and teacher, rather than a professional performance problem, a transfer to another school or department might be appropriate.

If the conference results in a determination that there is not sufficient evidence to support a termination, or should the principal's supervisor believe the teacher can improve and become successful, a summary memorandum such as Appendix D, that recaps the conference, may be prepared setting out specific standards and directives for the teacher to follow. In many cases, it will be appropriate to give the teacher specific directives and cite the teacher to specific policies which, if violated, could result in a recommendation for immediate termination in the future.

If, after hearing the teacher's side of the story, the administration decides to proceed with the recommendation for termination, the teacher may be advised of this and offered an opportunity to resign. Care must be taken not to force the teacher to resign, and if there are other consequences of resignation such as the forfeiture of future employment opportunities, or a report to the certification agency, those conditions must be disclosed. To help avoid constructive discharge claims, the teacher should be advised of the right to a hearing before the board or hearing officer (if applicable under the contract, board policies, or state law) should the teacher choose not to resign. A resignation must be voluntary, and it is for this

reason that it is advisable to have both the principal and the principal's supervisor present at the meeting to witness discussions concerning resignation. Allowing the teacher an opportunity to resign provides a professionally accepted escape prior to the recommendation for termination going to the board.

If appropriate, a termination recommendation may be made after the conference. When the recommendation is made, the principal and the supervisor should submit an appropriate notification letter of proposed termination for review by the school attorney. The principal and the supervisor should also prepare at this time, for approval by the school attorney, the notice of reasons supporting the proposed termination, and a list of witnesses together with their testimony that will be presented should the teacher request a hearing before the board or a hearing officer. The documents supporting the reasons for the proposed termination should also be submitted. The preparation of these letters and the gathering of documents in advance of presenting the proposed termination to the board will aid the principal and the school attorney in evaluating all facts and in determining whether a termination recommendation is the proper course. Additionally, this process ensures that the administrator remains in control of the employment situation, and it promotes self-confidence in the administrator's ability to act decisively and thoughtfully in following the district's personnel procedures.

Application to Chief Executive Officers

The documentation system outlined above is equally applicable to the district's chief executive officer, the superintendent, as well as other administrators. Normally, when a board of education is dealing with the superintendent on a specific incident, on a number of items, or in an evaluation setting, the board president will assume the leadership role the principal or superintendent would normally occupy. Many boards have found it helpful to meet in closed session, if permitted by the state's open meetings act, and discuss the items to be reviewed with the superintendent prior to having the superintendent join the board meeting. After discussing the matters with the superintendent, the board president, normally with the assistance of legal counsel, should have the appropriate memorandum or assessment document prepared and sent

to the superintendent on behalf of the board. The major difference in applying this system to the superintendent is that seven, nine, or some other number of board members, rather than one person, are involved in the communications.

Conclusion

Like all other personnel activities, this simple system of communication and documentation is not fail-safe. It must be implemented by humans, and it is subject to error. This system does, however, provide an opportunity for a principal to demonstrate leadership and to communicate effectively with teachers while developing the proper documentation for improvement or termination. In working with this system, the members of the board of education, hearing officers, the state commissioner of education, arbitrators, or judges will evaluate the termination recommendation on the basis of fairness and reasonableness. In the implementation of this system, a principal should be guided by the standard of treating the teacher as the principal would like to be treated if the principal were in the teacher's position. The principal should also strive to establish and maintain a climate where the employee can maintain his or her personal dignity. The use of this fair and effective documentation system should result in the improvement of most personnel problems and the efficient resolution of major or persistent problems through termination.

Appendix A
Sample Memorandum to the File

Teacher: Willie Makit
School: Miracle High
Grade: 10th
Subjects: Health and Sex Education, American History

9/20/02 Did not sign in upon arriving at school. Arrived at 8:10 – 20 minutes late (P.P.*)

9/26/02 In hallway near cafeteria at lunchtime. Did not challenge student who was in hall without permit. (P.P.)

10/9/02 Arrived 10 minutes late to school. Did not sign in until being reminded to do so by secretary Ida Spy. (P.P.)

10/11/02 Failed to turn in weekly lesson plans by 4:00 P.M. (P.P.)

10/18/02 Failed to turn in weekly lesson plans by 4:00 P.M. (P.P.)

10/21/02 Arrived 20 minutes late to school. (P.P.)

10/28/02 Did not sign in upon arrival. Secretary Ida Spy said he arrived about 5 minutes late. (P.P.)

11/1/02 Failed to turn in weekly lesson plans by 4:00 P.M. (P.P.)

* The initials of Paul Principal, who made the notation.

Appendix B
Sample Specific Incident Memorandum

TO: Willie Makit
FROM: Paul Principal
DATE: October 24, 2002
RE: Allegation of Misconduct by Mrs. Henry Wont, Mother of Bettie Wont, Student

You will recall that Mrs. Wont called me on October 21, 2002, to complain that you had molested her daughter, Bettie, while you were visiting their home one afternoon after school. No one else was at their home other than Bettie and you. Specifically, Mrs. Wont alleged that Bettie stated you embraced her and then began fondling her private parts while suggesting that the two of you get "better acquainted" upstairs.

I called you to my office on October 22, 2002, to discuss the matter with you. You told me that you had not molested Bettie in any way and had made no suggestions to her concerning getting "acquainted." You told me that you had taken Bettie to her home that afternoon, but only because Bettie requested that you do so. You also told me that the reason for taking Bettie home was because she was very upset about not making the cheerleading squad and seemed to want to talk with someone. I asked you about the times I had seen you in your classroom with Bettie after school was dismissed. You responded that you had, in fact, on several occasions counseled her about various matters and that she had come to regard you as a friend and confidant. In regard to the specific alleged incident, you stated that you and Bettie had been talking and that you were ready to leave, when she came over and embraced you. She then told you she loved you and wanted you to stay with her. You said you told her that you could not do so and left.

On October 23, 2002, I had a conference with Mrs. Wont, Bettie, and you. After a long discussion and after careful questioning, Bettie admitted that you had, in fact, not molested her or made suggestions to her. She said she was very angry at you for not staying with her, so she told her mother those things. Mrs. Wont apologized for the incident, as did Bettie.

Based upon this investigation, I have determined that you did not in any way molest Bettie Wont. However, I do find that your

conduct in this matter is not totally in keeping with proper professional standards. You are surely aware that students of Bettie's age are very impressionable. You should be very careful in your relations with female students and not encourage close personal relationships. Furthermore, unless an emergency exists, you are directed to avoid driving a female student home without someone else being present. More importantly, to avoid situations like this from arising in the future, you are directed to avoid visiting a female student in her home when her parents are not present. I will expect you to abide by these directives. I am also transferring Bettie from your Health and Sex Education Class into Also Able's class. Because of this incident, I think both of you will be more comfortable with this move.

If you disagree with the facts, conclusions, or directives in this memorandum, please advise me in writing no later than (date), so we can meet and work out any differences.

/s/_____
Paul Principal

I have received a copy of this memorandum. I understand that my signature does not necessarily constitute agreement with its contents and that I have an opportunity to respond if I disagree.

_____ _____
Willie Makit Date

Appendix C
Sample Summary Memorandum (General)

TO: Willie Makit
FROM: Paul Principal
DATE: November 6, 2002
RE: Conference of November 5, 2002

You will recall that on November 5, 2002, you and I had a conference concerning several aspects of your performance as a teacher. We discussed these topics:

1. Preparation and submission of lesson plans;
2. Arrival time for work; and
3. Teacher-student relations.

First, we discussed the fact that you have failed to turn in your weekly lesson plans by 4:00 P.M. on three occasions: October 11, 2002; October 18, 2002; and November 1, 2002. As we discussed, this is a very important part of your job as an educator. You told me you will make sure that your plans are on time from now on. I expect your lesson plans to be in my box by 4:00 P.M. every Friday beginning this Friday, November 8, 2002.

Second, we discussed several tardies and failures to sign in upon arrival at school. Specifically, you have arrived late on September 20, 2002; October 9, 2002; October 21, 2002; and October 28, 2002 and had to be reminded to sign in on October 9, 2002. Moreover, you failed to sign in on September 20, 2002, and October 28, 2002. We discussed the importance of prompt arrival, and I directed you to arrive on time in the future. You are expected to be at school at 7.50 A.M. each school day, and you will be expected to sign in by that time.

Third, we discussed your failure to challenge a student who was in the hallway without a permit on September 26, 2002. You informed me that because you were new to the building you did not realize that students needed hall permits during lunch hour. As I showed you, that rule is included in the Faculty Handbook on page ten. In the future, you will be expected to be fully apprised of all the rules in that handbook and enforce them.

Fourth, we once again discussed the incident involving Bettie Wont. Our discussion was a short version of our October 23, 2002, conference, and I repeated the directives I gave to you at that time concerning conduct with pupils of the opposite sex.

Mr. Makit, I appreciate your cooperative attitude concerning the correction of these matters. If you disagree with the facts or conclusions stated in this memorandum, please advise me in writing no later than (date), so we can meet and work out any differences.

/s/_____
Paul Principal

I have received a copy of this memorandum. I understand that my signature does not necessarily constitute agreement with its contents and that I have an opportunity to respond if I disagree.

_____ _____
Willie Makit Date

Appendix D
Sample Summary Memorandum
(Specific Directives)

TO: Willie Makit
FROM: Paul Principal
DATE: May 7, 2004
RE: Conference of May 3, 2004

Over the past two years, you and I have discussed your performance as a teacher at Miracle High School. We have had numerous conferences to discuss specific incidents that have arisen as well as our scheduled assessment conferences. As we neared the end of this year, it became apparent to me that you continued to experience difficulties in complying with directives and in meeting the school district's standards in certain instructional and non-instructional areas. With this in mind, we had a conference in my office on May 3, 2004, to discuss your performance. At that conference we discussed the following areas, and I gave you specific directives for improvement.

1. Preparation and submission of lesson plans. Since your arrival two years ago, you have experienced difficulty in submitting lesson plans in a timely fashion. You have acknowledged this on prior occasions such as in our conferences of November 5, 2002, March 17, 2003, and September 30, 2003. In this conference, you again acknowledged this was a problem, but you stated that your night classes at graduate school kept you from consistently completing the lesson plans on time. You stated that you felt this was a legitimate excuse. I explained to you that, while taking further coursework was a good thing, its demands do not excuse failure to meet the requirements of your job. I advised you that I must have the clearly written and completed lesson plans in my box by 4:00 P.M. every Friday.
2. Teacher-student relations. This is another area of historical difficulty. We discussed your initial failure to challenge a student for a hall pass on September 26, 2002, your failure to discipline students for setting fire to a trash can in your room on January 15, 2003, and your disruptive classes which caused teachers in nearby classrooms to complain on numerous occa-

sions in the spring of 2003 that their students were disturbed by the noise coming from your classroom. We discussed these incidents in detail at your evaluation conference on March 10, 2003. You have acknowledged that these incidents occurred and have promised to make corrections, but you continue to fail to ask students in the hall for passes (January 6 and 24, 2003, and April 16 and 23, 2004), and your classes have continued to be disruptive to the extent that your class distracts other teachers and students. As we discussed, these types of incidents and your failure to deal with them cannot continue. You must make the necessary corrections immediately.

3. Classroom work and the issuance of grades. As we discussed, this is the most serious problem you have as a teacher. At the end of four 9-week grading periods, you were one to two days late in getting your grades into my office (October 15, 2002; April 1, 2003; October 17, 2003; and March 30, 2004). After each of these incidents, I conferred with you, and, once again, you blamed your night classes for the delay. I once again explained that reason was not sufficient. In the latter of these conferences, April 2, 2004, you acknowledged that you had no daily or test grades for Health Education Period 1 and only two grades for Health Education Period 3. As has been explained at the first faculty meeting of each year and as contained on page six of the Faculty Handbook, you must have at least six daily grades and two test grades for each nine-week grading period. I specifically directed you to comply with these requirements.

Mr. Makit, the situation is serious. As I told you, I recommended your employment for the 2004–05 school year only because of your assurances that you will correct these deficiencies and follow these directives and school board policy. You have been given a growth plan in connection with your assessment, and numerous aids have been made available to you. As you and I discussed, I want this to work out so you will become a successful teacher and can continue to teach here. However, if you fail to follow any of the directives we discussed at our conference and which I have outlined in this memorandum, I will have no choice but to recommend that your employment with the district be terminated immediately.

If you have any questions concerning these directives or if you disagree with the facts or conclusions stated in this memorandum, please advise me in writing no later than (date), so we can meet and work out any differences.

/s/_____

Paul Principal

I have received a copy of this memorandum. I understand that my signature does not necessarily constitute agreement with its contents and that I have an opportunity to respond if I disagree.

_____ _____

Willie Makit Date

Appendix E
Sample Close Out Memorandum

Memorandum

TO: Ms. I.M. Blue, Teacher
FROM: Ms. Paula Principal
DATE: April 25, 2003
RE: Follow up to our conference, April 21, 2003

As you will recall, Mr. Mack Beth, Head of the English Department, and I met with you on April 21, 2003, to answer the questions posed in your memo of April 9, 2003. In your memorandum, you responded to your evaluation for the year. We discussed your feelings and perceptions concerning the problems you are having complying with the various clerical duties which are attendant to any teaching position. We also discussed your problems with attendance and leaving classes. In that conference, you seemed to emphasize that this had been a "bad year" in your life personally. Your discussion led us to believe that you wished to put this year behind you and start anew. You indicated that you did not disagree with our prior evaluations, but you felt that your side of the story should be told.

Mr. Beth and I want to assure you that your compliance with the performance expectations we have discussed with you in previous conferences and in conjunction with your evaluation should result in a healthy, productive work situation next year. Briefly, those performance objectives are the ones addressed in our previous conferences and evaluations: (1) inform the administration exactly how long you will be out when you expect to be absent; (2) call in every day when you are out and complete the leave form when you return; (3) follow the official work schedule, including your planning period; (4) complete lesson plans on a weekly basis.

These directives are, of course, set out in more detail in our memoranda of December 20, 2002, and March 14, 2003. Mr. Beth and I feel that this is a good time to conclude the discussion of these matters so we can end the year on a positive note and look forward to next year.

We hope you will have an enjoyable summer, and we look forward to working with you in the fall.

Very truly yours,

Ms. Paula Principal

cc: Personnel File
Asst. Supt. of Personnel
Mr. Mack Beth

Appendix F

Sample Letter

(This is an example of how not to handle a situation)

April 1, 2003

Ms. Tired Teacher
XYZ Street
Houston, Texas 77000

Dear Ms. Teacher:

It was reported to me yesterday by Mr. Peter Principal that you verbally assaulted him and tried to provoke a fight. Mr. Principal was quietly sitting in his office when you barged in and began yelling at him about the suspension of your grandson for fighting. He tried to be nice to you, but you would not listen. You cursed Mr. Principal then threw a notebook at him, barely missing his hand.

This unprofessional conduct on your part is unbelievable, and it is certainly action that an older woman like you should not do. I am directing Mr. Principal to include this incident of unprofessionalism in your personnel file. If you do something stupid like this again, it will be your last act as a teacher in this district.

Sincerely yours,

Super Superintendent

cc: All School Board Members

DO NOT USE

Appendix G
Checklist for Creating Effective Documentation

General Principles

- Treat all employees fairly and consistently
- Do not ignore concerns—address them promptly
- Have a third party put his or her complaint in writing
- Conference first with the employee, then write the memorandum

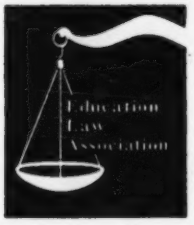
The Memorandum

- State the concern(s) specifically, including the date(s), the person(s) involved, the facts of the event(s) and any other pertinent details
- Rely on facts and observations
- Describe any investigation and its results
- Include the employee's response to all concerns
- Avoid conclusory and inflammatory language
- Be direct and avoid educational jargon
- Write in the first person in a conversational tone
- Do not backdate a memorandum
- Do not write a memorandum when angry
- Write the memorandum so that its later publication or its use as evidence in a hearing would not cause embarrassment to the author (objective tone, proper grammar, etc.)
- State a conclusion about whether the incident(s) or behavior(s) occurred and, if so, whether standards of conduct, board policy, or state civil or criminal laws were violated
- State clear, specific directives and/or corrective action if appropriate

- Warn the employee if adverse employment action, such as termination, may occur
- Give the employee a copy of the memorandum soon after the conference
- Have the employee sign to acknowledge receipt of the memorandum but not agreement with it
- If the employee refuses to sign for receipt, have an adult witness sign a copy of the memorandum noting that it was provided to the employee and the date
- Invite a written response and set a specific time for it to be provided

Follow-Up Activities

- Carefully consider any written response of the employee
- Investigate further if warranted by the response
- Conference with the employee again if necessary to clear up any issues created by the response
- Document the conference with a memorandum to the employee following the general principles above



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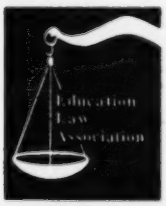
"Unfortunately, school principals occasionally must take action to dismiss a teacher. When such action is necessary, proper documentation is critical. Frels and Horton's monograph provides the principal with a system to properly document each step in the process so that the contemplated dismissal will withstand a legal challenge. This monograph contains many examples of sample memoranda with a step-by-step explanation of how to use each. This monograph is essential reading for all principals."

***Allan Osborne**, Principal, Snug Harbor Community School, Snug Harbor, MA*

"All students deserve good teachers. This guide provides a concise road map to documenting performance in order to ensure that only the best teachers remain in our classrooms. No administrator should be without it."

***Lois Berlin**, Associate Superintendent for Curriculum and Instruction, Alexandria Public Schools, Alexandria, VA*



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